Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

REPLY COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) respectfully submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking (rel. Aug. 18, 1997) (Third Order on Recon. or FNPRM) .

As discussed in further detail below, nothing in the comments filed by other parties suggests that requesting carriers should not be able to "use unbundled dedicated or shared transport facilities in conjunction with unbundled switching to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service." FNPRM at ¶ 61. Accordingly, the Commission should make clear that, consistent with the requirements of the Act, carriers can purchase unbundled network elements, including transport to provide any telecommunications service, including interexchange service.

I. The Commenting Parties Do Not, and Cannot, Demonstrate that Section 251(c)(3) of the Telecommunications Act Allows for Any Restrictions on Carriers' Use of Transport.

As the Commission has already made abundantly clear, the Telecommunications Act, on its face, entitles all carriers to use unbundled network elements, including transport, for the purpose of providing any telecommunications service. Interexchange service, including its originating and terminating components, is a telecommunications service. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd. 13042 (1996) (Local Competition Order) ¶ 340 ("[C]arriers may request unbundled elements for purposes of originating and terminating toll services . . ."); see also id. at ¶ 356 (same). The Local Competition Order was reviewed by the 8th Circuit, which vacated certain regulations and portions of the Order; this portion of the Order was not struck down and remains in full effect.

Presumably for this reason, most commenters do not argue that any restriction on the use of transport can be squared with the plain language of § 251(c)(3).[1] Instead, they argue that other sections of the Telecommunications Act preclude carriers' use of transport in the manner envisioned in the FNPRM or that, for prudential reasons, the Commission should order that carriers may not use transport to originate or terminate interexchange traffic. In doing so, they implicitly or, in some cases, explicitly, acknowledge that § 251(c)(3) mandates the result outlined in the FNPRM, and that, to reach a different result, the Commission would have to ignore the plain language of that statutory section. See, e.g. Ameritech Comments at 5-14; id. at

[1] Those commenters who argue that § 251(c)(3) cannot be read to allow the use of unbundled network elements to originate and terminate interexchange calls do not, notably, mention the FCC's prior order or address the fact that this portion of the Local Competition Order remains in full effect after 8th Circuit review. See, e.g., Comments of Bell South at 9.

9 (urging the Commission not to "read literally" Section 251(c)(3)). As set out further below, no commenter presents any meritorious argument for ignoring Section 251(c)(3)'s clear mandate.

II. Neither Section 251(g) nor Section 251(i) of the Telecommunications Act Preclude Carriers from Using Unbundled Network Elements to Originate and Terminate Interexchange Traffic.

Section 251(g) provides that local exchange carriers must provide access in accordance with the same equal access and nondiscriminatory interconnection restrictions applicable before passage of the Telecommunications Act, until such restrictions are superseded by the Commission. Certain commenters argue that this means that Section 251(c)(3) should not be read to mean what it says, but should be construed in a manner that would preserve the access regime as it has historically existed. See, e.g. Comments of GTE at 11; Comments of Ameritech at 7-10. This suggestion is nonsensical. Section 251(g) does not require that the access regime in existence on February 8, 1996 remain in place through all time. Indeed, the opposite is plainly true. Section 251(g) is an interim measure, expressly designed to apply only until the Commission issues new regulations.[2] The Commission promulgated new access regulations in May of this year. Even if Section 251(g) would have impacted the use of elements to originate and terminate interexchange traffic before the Commission issued its Access Charge Reform Order, it is apparent that it does not do so now.

Nor does Section 251(i) preclude carriers from taking full advantage of Section 251(c)(3)'s clear unbundling requirement. Section 251(i) preserves the Commission's authority

[2] The legislative history of the Act confirms this. The Joint Explanatory Statement indicates that 251(g) maintains the status quo only "[i]n the interim, between the date of enactment and the date the Commission promulgates new regulations . . ." Joint Explanatory Statement at 123.

over interexchange access, providing that nothing in section 251 "shall be construed to limit or otherwise affect the Commission's authority under section 201." Certain commenters suggest that this must mean that unbundled network elements cannot be used for origination and termination of interexchange traffic because state commissions set the price for these unbundled elements. See, e.g., Comments of Time Warner Communications at 8-9; Comments of Bell South at 10-11; Comments of GTE at 11; Comments of Ameritech at 11. If the elements are used to originate or terminate interexchange traffic, the incumbents argue, the Commission will thus have impermissibly ceded jurisdiction over exchange access pricing to the states. This argument has been raised, of course, by the ILECs in the past, and it has been rejected. As the Commission has already determined, its "authority to set rates for [access] services is not limited or affected by the ability of carriers to obtain unbundled elements for the purpose of providing interexchange service." *Local Competition Order* at ¶ 358. Allowing carriers to use unbundled elements to provide interexchange service does not impermissibly shift jurisdiction over access to the states -- "[w]hen states set prices for unbundled elements, they will be setting prices for a different product than 'interexchange access services.'" Id. Allowing carriers to utilize unbundled network elements in the manner that is compelled by the plain language of the statute in no way eviscerates the Commission's access authority; its "exchange access rules remain in effect and will still apply where incumbent LECs retain local customers and continue to offer exchange access services to interexchange carriers who do not purchase unbundled elements . . ." Id. As the Commission acknowledged in the Local Competition Order, what will be altered is the incumbent LECs' near-stranglehold on the access market. See id. ("What has potentially changed is the volume of access services, in contrast to the number of unbundled elements, interexchange carriers are likely to

demand and incumbent LECs are likely to provide.").

III. No Practical Impediment Exists with Respect to the Commission's Proposal.

Several ILECs point to the Commission's First Order on Reconsideration, which dealt in part with practical constraints on the use of unbundled switching, in a purported attempt to demonstrate that the Commission's proposal contained in the FNPRM is either technically infeasible or precluded by the Reconsideration Order. See e.g., Comments of Bell Atlantic at 4; Comments of GTE at 13; see also Comments of Time Warner at 8-9. These commenters appear to be basing their arguments on a misperception of the FNPRM. As MCI understands it, the FNPRM asks whether a carrier can purchase dedicated and/or shared transport from the ILEC in order to get calls to, or from, the ILEC end office. This is analogous to the manner in which interexchange carriers currently purchase dedicated transport to or from the ILEC end office. Having purchased that transport as an unbundled network element, the carrier would still be responsible for paying for whatever switched access rate elements would apply, such as the access rate element associated with local switching, and the CCL. This does not involve the carrier purchasing access to unbundled local switching at all. Accord Comments of WorldCom at 4; Comments of Sprint at 1, n.2. The Commission's First Order on Reconsideration, which found that, as a practical matter, unbundled local switching can be purchased only by the carrier who provides local exchange service to the end user, is thus not pertinent to the question currently at issue.[3]

[3] Certain commenters argue that shared transport cannot be provided without access to unbundled switching and that the Commission's FNPRM is thus technically infeasible. This, however, is merely a veiled attack on the Commission's shared transport requirement itself. All transport requires the use of routing tables contained in the local switch. As the Commission concluded in the Third Order on Reconsideration, that does not preclude carriers from purchasing

IV. Prudential Concerns Weigh Strongly in Favor of Allowing Carriers to Use Transport to Originate and Terminate Interexchange Traffic.

Because the statutory arguments and "practical" concerns raised by the incumbent LECs are meritless, all that remains is their argument that it would be bad policy to allow carriers to do what the statute plainly allows them to do. See, e.g., Comments of Sprint Corporation at 2 (acknowledging that the Commission's proposed rule is "clearly within the purview of the Commission and appropriate under the Telecommunications Act of 1996," and arguing that it should not be adopted only "as a matter of policy"). If carriers are allowed to purchase transport as an unbundled element to originate and terminate interexchange traffic, the ILECs argue, then their access revenues will drop precipitously, the implicit subsidies hidden in access rates will evaporate, and universal service will collapse. See, e.g., Comments of Ameritech at 12-14; Comments of GTE at 6. These commenters are simply wrong.

First, even if carriers did replace this portion of access entirely with unbundled transport, incumbent LECs' revenues would not drop dramatically. The tandem switched revenues realized by all ILECs are currently approximately $380 million per year. Access revenue from dedicated transport accounts for roughly $560 million per year. See Tier 1 Compendium and Rollup, 1997 Annual Access Tariff Filings Price Cap Tariff Review Plan ("1997 TRP"). These two revenue components combined account for less than 10% of incumbent LECs' switched access revenue. See id.; see also Access Reform NPRM, CC Docket No. 96-262 (rel. 12/24/96) at ¶ 29 - Table 1 (indicating that CCL, TIC and local switching represent 90% of switched access revenue). And, of course, this revenue would not simply disappear; it would be

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shared transport as a separate and distinct unbundled network element. See Third Order on Recon. at ¶42.

replaced by the revenue realized by the sale of transport as unbundled elements. In the case of dedicated transport, there would be little, if any, decrease at all in the ILECs' revenue stream. The Commission has found that the tariffed access rates for dedicated transport "are currently at or close to economic cost levels." *Local Competition Order* at 821. Thus, the rates set for unbundled network elements should not differ in any significant respect from the dedicated transport access tariffed rates, and it necessarily follows that ILECs' revenues will not dip dramatically regardless of whether carriers purchase dedicated transport as an unbundled element or as a tariffed access service.

Nor will allowing carriers to purchase shared transport to originate and terminate interexchange calls result in a dramatic decrease in ILEC revenues. As noted above, tandem switched access revenue currently accounts for roughly $380 million per year for all ILECs combined. Even if every carrier immediately stopped purchasing tandem switched access and purchased shared transport as an unbundled element instead, which they will not, and even if incumbent LECs received no income whatsoever for the sale of shared transport as an unbundled element, which, of course, will not be the case, the total loss in revenue would be less than 5% of their total switched access revenue. The ILECs' claim that their access revenue would precipitously decline and that universal service, and therefore the public interest, would suffer as a result simply has no basis in fact.[4]

In fact, the public interest would clearly be served by allowing carriers to use transport to originate and terminate interexchange traffic. As MCI noted in its original comments,

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[4] The ILECs' overblown claims may be based on a misconception of the Commission's FNPRM. See discussion contained in Section III, supra.

the Commission has concluded that access charges should move to cost and that market-based competitive forces should be used to drive these charges to cost. It is indisputable, however, that in the majority of markets, there is no meaningful access competition. In the majority of markets, competitive access providers (CAPs) do not exist.[5] Moreover, although competing local carriers serving customers can, in theory, purchase unbundled network elements and offer competitive access to their customers, in practice, competing local carriers are serving few, if any, customers. ILECs have, and are likely to maintain, a vast monopoly in the provision of local service, at least in the near term.[6] Without some means of creating competitive pressure in the access market, the same will clearly be true there as well. No commenting party meaningfully disputed this.

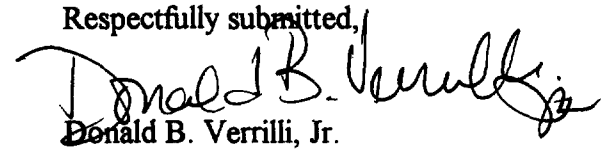
[5] In fact, the areas in which carriers would be most likely to use shared transport, such as rural areas, are the same areas in which there are few, if any, CAPs offering competitive access services.

[6] Indeed, Chairman Hundt noted just this week that incumbent LEC behavior, especially in the wake of the recent 8th Circuit decision, could be expected to have the effect of "significantly delaying -- perhaps even preventing -- many Americans from being able to have more than one choice for their local telephone company." See Washington Telecom Newswire Notebook, October 15, 1997.

CONCLUSION

For the reasons set out in MCI's initial comments and in these reply comments, the Commission should determine that a carrier purchasing unbundled transport can use that transport to provide any telecommunications service, including interexchange service, regardless of whether it provides local exchange service to a given customer.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jodie L. Kelley, do hereby certify that copies of the foregoing "Reply Comments of MCI in Response to the Commission's Further Notice of Proposed Rulemaking" were sent via first class mail or hand delivery to the following on October 17, 1997:

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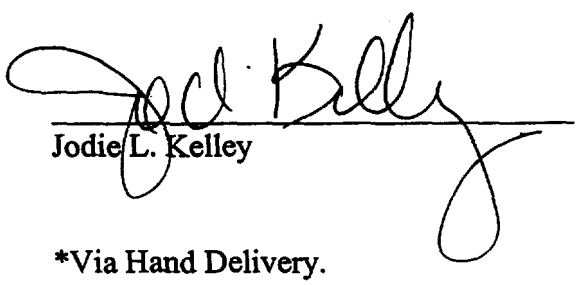

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*Via Hand Delivery.